

REMARKS

1. Priority Claim.

In section 2 of the Office Action, the Examiner noted that applications that claim priority to prior non-provisional applications must be amended to contain a specific reference to the prior non-provisional application in the first paragraph of the specification. Applicants note that the present application is a 35 U.S.C. § 371 national phase filing from an international application that claims priority to an earlier filed German application, which does not require a specific reference in the specification. The filing receipt lists the proper priority information. However, Applicants have submitted an application data sheet along with the present amendment that contains the priority information.

2. Drawings.

In section 3 of the Office Action, the Examiner objected to the drawings under 37 C.F.R. § 1.83(a), noting that the “electromagnet” cited in the claims is not shown in the drawings. In response, Applicants have cancelled claim 39, which is the only claim reciting the “electromagnet.” Because the electromagnet is described in the specification at at least paragraph [0048], Applicants may add a dependent claim at a later date along with a corresponding drawing amendment showing the electromagnet. However, the cancellation of claim 39 without prejudice has rendered the objection to the drawings moot.

3. Objections to the Specification.

In section 5 of the Office Action, the Examiner objected to the abstract because the abstract exceeds 150 words. In response, Applicants have amended the abstract such that the amended abstract contains fewer than 150 words. Accordingly, Applicants request that the objection to the abstract be withdrawn.

In section 6 of the Office Action, the Examiner noted the various sections that should be included in an application. Applicants note that the substitute specification filed with the preliminary amendment on August 1, 2002 contains new section headings not found in the originally filed specification. The new section headings correspond to the various sections

highlighted by the Examiner, with the exception of sections that are not relevant to the present specification, such as the sequence listing, statement regarding federally sponsored research or development, and incorporation by reference of materials submitted on a compact disk. Accordingly, Applicants have not made further structural changes to the specification but would be willing to do so if requested by the Examiner.

4. Claim Objections.

In section 7 of the Office Action, the Examiner objected to claims 25, 29, and 45 and recommended various amendments. Applicants have amended the claims as suggested by the Examiner and request that the Examiner withdraw the objections to the claims.

5. Rejection of Claims 25-26, 34, 37-39, and 41 under 35 U.S.C. § 112.

In Sections 9-15 of the Office Action, the Examiner rejected claims 25, 26, 34, 37-39, and 41 under 35 U.S.C. Section 112, second paragraph. With this reply, Applicants have canceled claim 39 without prejudice and have amended claims 25, 26, 34, 37-38, and 41 to overcome the rejection.

Applicants have amended claim 25 to recite “and the upper back part is pivoted in the pivoting direction” in place of “the pivoting motion is thereby initiated” in order to resolve the antecedent basis problem with the recitation of “the pivoting motion.” Claim 25 recites “a pivoting direction” in line 6 to provide antecedent basis for the recitation “the pivoting direction” in the amended language.

Applicants have amended claim 26 to recite “a spacing between the headrest and a seat user’s head” and “the spacing between the headrest and the seat user’s head” to eliminate both recitations of “its” in the claim and resolve the antecedent basis issue.

Applicants have amended claim 34 to recite “wherein the torque-generating device is a torsion spring and wherein the interlock lever is joined to the torsion spring” to resolve the antecedent basis issue. Applicants note that claim 34 is currently withdrawn, but have amended the claim language in response to the Examiner’s rejection such that the claim will

be in acceptable format in the event that generic independent claim 25 is allowed and the withdrawn dependent claims are brought back into the application.

Applicants have amended claim 37 to recite “a holding part” in place of “a pocket-like holding part” in order to remove the recitation of “pocket-like” as requested by the Examiner. One embodiment of the “holding part” is described in paragraph [0045] of the specification and is shown as element 6b in several of the figures. Applicants have amended claims 38 and 41 in a similar fashion to remove the recitation of “pocket-like” and “pocket-shaped.”

In view of the above amendments to overcome the rejection of claims 25, 26, 34, 37-39, and 41 under 35 U.S.C. Section 112, Applicants respectfully present claims 25, 26, 34, 37-38, and 41 for reconsideration and allowance.

6. Rejection of Claims 25, 26, 30, and 45 under 35 U.S.C. § 102(b) as anticipated by Föhl.

In Section 17 of the Office Action, the Examiner rejected claims 25, 26, 30, and 45 under 35 U.S.C. Section 102(b) as anticipated by Föhl, U.S. Patent No. 5,882,071 (hereinafter, “the ‘071 patent”). With this reply, Applicants respectfully traverse the rejection based upon the arguments set forth below.

The ‘071 patent discloses a vehicle seat for a vehicle occupant, wherein the seat has a backrest and a headrest arranged on the backrest that is movable from a normal starting position into a restraint position.

The ‘071 patent does not identically disclose an “immobilization means for retention of [an] upper back part in the normal position” as recited in claim 25. As discussed in col. 3, lines 46-58 of the ‘071 patent, in the case of a collision, an activator ignites an inflator, which drives a piston 38, pulling a cable 20a, thus swiveling the headrest out of the normal position. See FIGs. 1, 2, and 4 of the ‘071 patent. Although the reference describes a feature used to retain the headrest in the restraint position in col. 4, lines 4-6, it does not appear to disclose any immobilization means used to retain the headrest in the normal position that must be nullified to pivot out of the normal position, as recited in claim 25.

Furthermore, the vehicle seat of the '071 patent does not disclose a "vehicle crash sensor being in effective connection with...the lever system constituting the immobilization means for retention of the upper back part" as recited in claim 1, as there is no such immobilization means. Even if the compression spring 28 of Fig 2 is considered to be an "immobilization means," it does not appear to be in connection with a crash sensor, and is not "nullified" in the event of a rear end impact as recited in independent claim 25.

In view of the above arguments, Applicants respectfully assert that the '071 patent does not identically disclose each of the elements of independent claim 25. Accordingly, independent claim 25 and corresponding dependent claims 26, 30, and 45 are presented for reconsideration and allowance.

7. Rejection of Claims 25-31, 41, and 45 under 35 U.S.C. § 102(e) as anticipated by Müller.

In Section 18 of the Office Action, the Examiner rejected claims 25-31, 41, and 45 under 35 U.S.C. § 102(b) as anticipated by Müller, U.S. Patent No. 6,082,817. With this reply, Applicants respectfully traverse the rejection based upon the arguments set forth below.

Müller discloses a motor vehicle seat having a backrest on which a headrest is adjustably arranged and wherein the headrest can be adjusted into a protective or a safety position. Contrary to the invention recited in independent claim 25, there is no "upper back part" that is "pivoted in the pivoting direction." The head rest disclosed by Müller does not describe – during its movement from its normal position to its protective position – a pivoting movement because the swiveling levers 24 and 25 describe a parallelogram-like movement without any rotation/rotary motion of the head rest.

Furthermore, Müller does not disclose a "vehicle crash sensor being in effective connection with ...the lever system constituting the immobilization means for retention of the upper back part" as recited in independent claim 25, as there is no such immobilization means. Müller discloses no retention of an upper back part in the normal use position. Therefore, Müller does not disclose a situation where "the retention of the upper back part in the normal use position is nullified," as recited in claim 25.

The concept underlying the disclosure of reference Müller is distinctly different from the teaching of the present invention as there are no immobilization means for retention of an upper back part in the normal position at all. The springs 46, 47 shown in Figs. 1 and 3 of Müller cannot be understood as an “immobilization means for retention of the upper back part in the normal position” according to the claim 25 because the springs do not provide an immobilization. Müller does not teach a certain prestressing of the springs. Therefore, with the vehicle seat of reference Müller, even a small force is able to move the head rest out of its normal position, therefore providing no immobilization means.

In any case, even if the springs 46, 47 are regarded as an immobilization means, Müller does not identically disclose a nullification of the retention of an upper back part in the normal position.

In view of the above arguments, Applicants respectfully assert that Müller does not identically disclose each of the elements of independent claim 25. Accordingly, independent claim 25 and corresponding dependent claims 26-31, 41, and 45 are presented for reconsideration and allowance.

8. Rejection of Claims 36-39 under 35 U.S.C. § 103(a) as unpatentable over Föhl ('071) in view of Föhl ('750) and further in view of Breed.

In Section 20 of the Office Action, the Examiner rejected claims 36-38 under 35 U.S.C. § 103(a) as unpatentable over Föhl (the '071 patent) in view of U.S. Patent No. 5,934,750 to Föhl (hereinafter, “the '750 patent”). As discussed above, independent claim 25, from which claims 36-39 depend, is patentable over the '071 patent. The '750 patent does not overcome the deficiencies of the '071 patent as discussed below.

The '750 patent discloses a head rest of a vehicle seat, wherein the head rest is moved from a normal initial position to a position proximate the vehicle occupant's head under the effect of inertial forces occurring at a mass coupled to the headrest. The '750 patent therefore does not show any means for detecting a rear-end impact and furthermore not show an immobilization means for retention of the upper back part in the normal position because it is the inertial body 20 which moves the head rest out of its normal position into its safety

position. The pivotally mounted pawl 30 of the '750 patent prevents the head rest of the '750 patent from moving out of its security position (and not out of its normal position).

Therefore, the pawl 30 of the '750 patent and the means for retention of the upper back part according to the invention of independent claim 25 have opposed functions. Because neither the '071 patent nor the '750 patent discloses an immobilization means for retention of the upper back part in the normal position as recited in independent claim 25, dependent claims 36-38 are patentable over the cited references and are presented for reconsideration and allowance.

In section 21 of the Office Action, the Examiner rejected claim 39 under 35 U.S.C. § 103(a). Applicants have canceled claim 39 without prejudice, and therefore the rejection is moot.

CONCLUSION

Claims 25-38 and 40-46 are pending in the present application. Claims 32-35, 40, 42-44, and 46 are withdrawn. Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application, as amended, is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

Date 9/22/03

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